

SUPREME COURT OF WISCONSIN

CASE NO.: 03-0106-CR

COMPLETE TITLE:

State of Wisconsin,
 Plaintiff-Respondent,
 v.
 Scott R. Jensen, Steven M. Foti, and
 Sherry L. Schultz,
 Defendants-Appellants-Petitioners.

REVIEW OF A DECISION OF THE COURT OF APPEALS
 2004 WI App 89
 Reported at: 272 Wis. 2d 707. 681 N.W.2d 230
 (Ct. App. 2004-Published)

OPINION FILED: March 23, 2005
 SUBMITTED ON BRIEFS:
 ORAL ARGUMENT: January 6, 2005

SOURCE OF APPEAL:
 COURT: Circuit
 COUNTY: Dane
 JUDGE: Daniel R. Moeser

JUSTICES:
 CONCURRED:
 DISSENTED:
 NOT PARTICIPATING: WILCOX, PROSSER, and BUTLER, J.J., did not
 participate.

ATTORNEYS:

For the defendants-appellants-petitioners there were briefs by *Stephen J. Meyer and Meyer Law Office*, Madison (on behalf of Scott R. Jensen); *Stephen L. Morgan and Murphy Desmond, SC*, Madison (on behalf of Sherry L. Schultz); and *Franklyn M. Gimbel, Kathryn A. Keppel and Gimbel, Reilly Guerin & Brown*, Milwaukee (on behalf of Steven M. Foti), and oral argument by *Franklyn M. Gimbel* (on behalf of Steven M. Foti), *Stephen J. Meyer* (on behalf of Scott R. Jensen), and *Stephen L. Morgan* (on behalf of Sherry L. Schultz).

For the plaintiff-respondent the cause was argued by *Barbara L. Oswald*, assistant attorney general, with whom on the brief was *Peggy A. Lautenschlager*, attorney general.

2005 WI 31

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 03-0106-CR
(L.C. No. 02 CF 2453
02 CF 2454
02 CF 2455)

STATE OF WISCONSIN

: IN SUPREME COURT

State of Wisconsin,

Plaintiff-Respondent,

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Scott R. Jensen, Steven M. Foti, and
Sherry L. Schultz,

Defendants-Appellants-
Petitioners.

FILED

MAR 23, 2005

Cornelia G. Clark
Clerk of Supreme Court

REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 PER CURIAM. The court is unanimous in determining that the charges against the petitioners do not violate the doctrine of separation of powers. Further, the court is unanimous in determining that Wis. Stat. § 946.12(3) (2001-02), the statute that the petitioners have been charged with violating, does not here circumscribe legitimate legislative activity and, therefore, is not overbroad. The court is also unanimous in determining that the issues presented are

justiciable, in that the political question doctrine does not interfere with the court deciding these matters.

¶2 The court is also unanimous in holding that the petitioners have standing to raise the issues related to Due Process, Fair Notice, and the vagueness of Wis. Stat. § 946.12(3) as applied, but the court is equally divided as to whether the petitioners have met the burden of establishing that the charges here violate those principles. Chief Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley would affirm the court of appeals on those issues, and Justice N. Patrick Crooks and Justice Patience D. Roggensack would reverse on those issues.

¶3 Accordingly, the decision of the court of appeals is affirmed.

By the Court.—The decision of the court of appeals is affirmed.

¶4 Justices JON P. WILCOX, DAVID T. PROSSER, JR., and LOUIS B. BUTLER, JR. did not participate.

